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February 11, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: April 16, 2004

Case Number: TSO-0097

This decision concerns the eligibility of XXX XXX XXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy security office (the LSO) denied the Individual's request for an access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be granted.<sup>1</sup> For the reasons stated below, I find that the Individual's access authorization should be granted.

**I. BACKGROUND**

The present case concerns an Individual who is alleged to be "a user of alcohol habitually to excess." The events leading to this proceeding began when the LSO reviewed information gathered during a background investigation of the Individual. That information indicated that he had been arrested for two alcohol related incidents in 1990 and 1993. A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On November 26, 2002, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. DOE Psychiatrist's Report at 1. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On November 28, 2002, the DOE Psychiatrist issued a report in which he opined that the Individual habitually used alcohol to excess. The DOE did not diagnose the Individual with Alcohol Abuse or Dependence or any other medical condition or disorder. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his alleged habitual use of alcohol. Specifically, the DOE Psychiatrist opined that in order to establish *rehabilitation* from his habitual use of alcohol to excess, the Individual must:

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

(1) Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least once a week, for a minimum of two years and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 year following the completion of this program = 2 years of sobriety.

(2) Satisfactorily complete a minimum of 50 hours of a professionally led, substance abuse treatment program, for a minimum of 6 months, including what is called 'aftercare,' and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 and 1/2 years following the completion of this program = 2 years of sobriety.

DOE Psychiatrist's Report of Examination at 18 (emphasis in the original). The DOE Psychiatrist further opined that "any future resumption of drinking alcohol or using non-prescribed controlled substances will be evidence that the subject is not showing adequate evidence of rehabilitation." *Id.* The DOE Psychiatrist opined that in order to establish *reformation* from his habitual use of alcohol to excess, the Individual must either:

(1) If the subject goes through one of the two rehabilitation programs listed above, then 2 years of absolute sobriety would be necessary to show adequate evidence of reformation.

(2) If the subject does not go through one of the two rehabilitation programs listed above, then 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

DOE Psychiatrist's Report of Examination at 18. The DOE Psychiatrist further opined that "any future resumption of drinking alcohol or using non-prescribed controlled substances will be evidence that the subject is not showing adequate evidence of reformation." *Id.*

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess." 10 C.F.R. § 710.8(j)(Criterion J).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented two witnesses: his supervisor and a board-certified psychiatrist. The Individual also testified on his own behalf.

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## III. FINDINGS OF LAW AND FACT

In the present case, the LSO is concerned that the Individual has been drinking habitually to excess. The Notification Letter does not allege that the Individual suffers from Alcohol Abuse or Dependence. The bases for the accusation that the Individual habitually drinks to excess are set forth in the Notification Letter. The Notification Letter claims:

- (1) The DOE Consultant Psychiatrist reported that the Individual is “a user of alcohol habitually to excess. . ..”<sup>2</sup>
- (2) The Individual was arrested for Disorderly Conduct in 1993. He later pled guilty to this charge. The Individual was under the influence of alcohol when the events that culminated in this arrest occurred.
- (3) The Individual was arrested and was charged with being an “Accessory in Minor Procuring Alcoholic Beverages” in March 1990.
- (4) On May 14, 2002, the Individual admitted that he drank to the point of intoxication on a monthly basis.

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<sup>2</sup> The Regulations do not require that a determination that a person is or has been a user of alcohol habitually to excess be supported by the opinion of a medical professional .

(5) The Individual reported that his mother had expressed concern regarding his intake of alcohol.<sup>3</sup> I note that the issue before me, whether the Individual is a habitual user of alcohol to excess, is difficult to address.<sup>4</sup> Neither the Part 710 Regulations (the Regulations) nor the DOE's Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, set forth at Appendix B to Subpart A of 10 C.F.R. Part 710 (the Guidelines) define the terms "habitual" or "excess." It is safe to assume that by excess it is meant intoxication. The Guidelines state: "Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Guideline G: Alcohol Consumption. The determination of an individual's suitability to maintain a DOE access authorization is in essence a risk assessment. Whenever an individual with a DOE access authorization becomes intoxicated, the risk of an unauthorized disclosure exists. The more often a particular clearance holder is intoxicated, the greater the risk is of an unauthorized disclosure. While there exists no prohibition against a clearance holder occasionally ingesting alcohol to the point of intoxication on his own time, if a clearance holder becomes intoxicated often enough, the risk becomes too great for the DOE to allow the Individual to maintain an access authorization. Unfortunately, the Regulations and the Guidelines offer no specific guidance in determining that point at which the risk becomes too great.

In the present case, I have been spared the difficult decision of determining whether or not the risk resulting from the monthly use of alcohol to the point of intoxication is acceptable. The Individual has convinced me that he has discontinued his use of alcohol completely and intends to refrain from any use of alcohol in the future. The Individual testified that he has refrained from the use of alcohol since his birthday in January 2003. Tr. at 19.<sup>5</sup> The Individual further testified credibly that he intends to refrain from using alcohol in the future. *Id.* The Individual's wife submitted a sworn declaration stating that her husband had not consumed alcohol since his birthday in January 2003. In addition, the Individual explained that he has adopted a new health conscious lifestyle in which alcohol does not fit. Tr. at 71. Specifically, the Individual testified that he had become involved

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<sup>3</sup> The Individual apparently reported this fact to the DOE Psychiatrist during his forensic psychiatric examination. The Individual attempted to place this information in context by testifying that his mother had made this comment when he was a teenager. Tr. at 16.

<sup>4</sup> A former DOE Consultant Psychiatrist (the Former DOE Psychiatrist) testified on the Individual's behalf. The Former DOE Psychiatrist testified that he performed a forensic psychiatric examination of the Individual and could not find any evidence of a substance-induced or psychiatric disorder. Tr. at 51.

<sup>5</sup> The Transcript indicates that Individual testified that his birthday occurred in June, but both the Individual's wife's sworn declaration and a Questionnaire for National Security Positions completed by the Individual indicate that his birthday occurred in January. In addition, the subsequent testimony of the DOE Psychiatrist indicated that he had heard the Individual testify that his birthday occurred in January. Tr. at 26.

with Tai-kwon-do and Tai-bo. Tr. at 20. These disciplines keep the Individual occupied and require a commitment to physical fitness. Tr. at 71. I find the Individual's testimony that he has refrained from using alcohol for the past 18 months to be credible. Therefore, I have no doubts about the Individual's commitment or ability to refrain from further alcohol use. Accordingly, I find that any risk from the Individual's monthly intoxication has been mitigated by the Individual's 18 months of sobriety and his commitment to refrain from future alcohol use.

The DOE Psychiatrist has opined that the Individual should be required to have completed the same sort of rehabilitation or reformation program that an individual with an Alcohol Abuse or Dependence diagnosis would need to mitigate the security concerns raised by those disorders. I am not of that same opinion. Individuals with substance abuse disorders have medical disorders requiring treatment and it is well settled that such individuals face a significant risk of relapse.<sup>6</sup> However, the Individual's alleged past habitual intoxication has not been shown to be the result of a disorder. In my opinion, the Individual's 18 months of abstinence coupled with his commitment to refrain from using alcohol in the future suffice to resolve any security concerns raised by his use of alcohol.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be granted at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: February 11, 2005

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<sup>6</sup> The DOE Psychiatrist's testimony indicates that he suspects the Individual might have an alcohol related disorder, for which he was unable to gather sufficient evidence. Tr. at 25. This concern was apparently based upon the Individual's alleged long history of drinking habitually to excess, the Individual's family history of Alcohol Dependence and the DOE Psychiatrist's concern that the Individual was "close to meeting some of the criteria for Alcohol Dependence." Tr. at 25.